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Administrative Personnel

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PARTS 1 TO 699
Revised as of January 1, 1988



§ 340.401

Subpart C—[Reserved]

Subpart D—Regulatory Requirements—Seasonal, On-Call, and Intermittent Employment

AUTHORITY: 5 U.S.C. 3301, 3302.

SOURCE: 49 FR 17722, Apr. 25, 1984, unless otherwise noted.

§ 340.401 Definitions.

(a) Seasonal employment means annually recurring periods of work of less than 12 months each year. Seasonal employees are placed in non-duty/nonpay status and recalled to duty in accordance with preestablished conditions of employment.

(b) On-call employment means recurring periods of work on an as needed basis during periods of heavy workload with an expected cumulative service period of at least six months in pay status each year. On-call employees work regularly scheduled tours of duty while in pay status and are placed in nonduty/nonpay status and recalled to duty in accordance with preestablished conditions of employment. On-call employees move into the agency's year-round work force as vacancies occur.

(c) Intermittent employment means employment without a regularly scheduled tour of duty.

§ 340.402 Appropriate use.

Agencies are authorized to employ seasonal, on-call, and intermittent personnel serving under career or career-conditional appointments in accordance with procedures published in Federal Personnel Manual (FPM) Chapter 340, Other Than Full-Time Career Employment (Part-time, Seasonal, On-Call and Intermittent). Procedures governing employment of individual's appointed under other authorities are contained in other appropriate chapters of the FPM.

5 CFR Ch. I (1-1-88 Edition)

PART 351—REDUCTION IN FORCE

Subpart A—[Reserved]

Subpart B—General Provisions

Sec.

- 351.201 Use of regulations.
- 351.202 Coverage.
- 351.203 Definitions.
- 351.204 Responsibility of agency.
- 351.205 Authority of OPM.

Subpart C—Transfer of Function

- 351.301 Applicability.
- 351.302 Transfer of employees.
- 351.303 Identification of positions with a transferring function.

Subpart D—Scope of Competition

- 351.401 Determining retention standing.
- 351.402 Competitive area.
- 351.403 Competitive level.
- 351.404 Retention register.
- 351.405 Employees demoted because of unacceptable performance.

Subpart E—Retention Standing

- 351.501 Order of retention—competitive service.
- 351.502 Order of retention—excepted service.
- 351.503 Length of service.
- 351.504 Credit for performance.
- 351.505 Records.
- 351.506 Effective date of retention standing.

Subpart F—Release From Competitive Level

- 351.601 Order of release from competitive level.
- 351.602 Prohibitions.
- 351.603 Actions subsequent to release from competitive level.
- 351.604 Use of furlough.
- 351.605 Liquidation provisions.
- 351.606 Mandatory exceptions.
- 351.607 Permissive continuing exceptions.
- 351.608 Permissive temporary exceptions.

Subpart G—Assignment Rights (Bump and Retreat)

- 351.701 Assignment involving displacement.
- 351.702 Qualifications for assignment.
- 351.703 Exception to qualifications.
- 351.704 Rights and prohibitions.
- 351.705 Administrative assignment.

Office of Personnel Management

Subpart H—Notice to Employee

- 351.801 Notice period.
- 351.802 General and specific notice.
- 351.803 Content of notice.
- 351.804 Notice concerning consideration for reemployment.
- 351.805 Expiration of notice.
- 351.806 New notice required.
- 351.807 Status during notice period.

Subpart I—Appeals and Corrective Action

- 351.901 Appeals.
- 351.902 Correction by agency.

Subpart J—Reemployment Priority List

- 351.1001 Establishment and maintenance of the reemployment priority list.
- 351.1002 Persons covered.
- 351.1003 Employee eligibility.
- 351.1004 Duration of eligibility.
- 351.1005 Operation of the list in A and overseas.

AUTHORITY: 5 U.S.C. 1302, 3501.

§ 351.1005 also issued under 5 U.S.C. 3302.

SOURCE: 51 FR 319, Jan. 3, 1986, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—General Provisions

§ 351.201 Use of regulations.

(a)(1) Each agency is responsible for determining the categories of positions which are required, which positions are to be located, and which positions are to be filled, abolished, or vacated. This includes determining whether there is a surplus of employees at a particular location in a particular work.

(2) Each agency shall follow the procedures set forth in part when it releases a competitive employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or assignment requiring displacement when the release is required because of lack of work; shortage of funds; sufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.

Office of Personnel Management**§ 351.202****Subpart H—Notice to Employee**

- 351.801 Notice period.
- 351.802 General and specific notices.
- 351.803 Content of notice.
- 351.804 Notice concerning consideration for reemployment.
- 351.805 Expiration of notice.
- 351.806 New notice required.
- 351.807 Status during notice period.

Subpart I—Appeals and Corrective Action

- 351.901 Appeals.
- 351.902 Correction by agency.

Subpart J—Reemployment Priority List

- 351.1001 Establishment and maintenance of the reemployment priority list.
- 351.1002 Persons covered.
- 351.1003 Employee eligibility.
- 351.1004 Duration of eligibility.
- 351.1005 Operation of the list in Alaska or overseas.

AUTHORITY: 5 U.S.C. 1302, 3502, 3503; § 351.1005 also issued under 5 U.S.C. 3315.

SOURCE: 51 FR 319, Jan. 3, 1986, unless otherwise noted.

Subpart A—[Reserved]**Subpart B—General Provisions****§ 351.201 Use of regulations.**

(a)(1) Each agency is responsible for determining the categories within which positions are required, where they are to be located, and when they are to be filled, abolished, or vacated. This includes determining when there is a surplus of employees at a particular location in a particular line of work.

(2) Each agency shall follow this part when it releases a competing employee from his or her competitive level by furlough for more than 30 days, separation, demotion, or reassignment requiring displacement, when the release is required because of lack of work; shortage of funds; insufficient personnel ceiling; reorganization; the exercise of reemployment rights or restoration rights; or reclassification of an employee's position due to erosion of duties when such action will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days.

(b) This part does not require an agency to fill a vacant position. However, when an agency, at its discretion, chooses to fill a vacancy by an employee who has been reached for release from a competitive level for one of the reasons in paragraph (a)(2) of this section, this part shall be followed.

(c) Each agency is responsible for assuring that the provisions in this part are uniformly and consistently applied in any one reduction in force.

(d) An agency authorized to administer foreign national employee programs under section 408 of the Foreign Service Act of 1980 (22 U.S.C. 3968) may include special plans for reduction in force in its foreign national employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

§ 351.202 Coverage.

(a) *Employees covered.* Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government; and

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to competitive service requirements or are determined by the appropriate legislative or judicial administrative body to be covered hereunder. Coverage includes administrative law judges except as modified by Part 930 of this chapter.

(b) *Employees excluded.* This part does not apply to an employee:

(1) In a position in the Senior Executive Service; or

(2) Whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the United States Senate, except a postmaster.

(c) *Actions excluded.* This part does not apply to:

§ 351.203

(1) The termination of a temporary or term promotion or the return of an employee to the position held before the temporary or term promotion or to one of equivalent grade and pay.

(2) A change to lower grade based on the reclassification of an employee's position due to the application of new classification standards or the correction of a classification error.

(3) A change to lower grade based on reclassification of an employee's position due to erosion of duties, except that this exclusion does not apply to such reclassification actions that will take effect after an agency has formally announced a reduction in force in the employee's competitive area and when the reduction in force will take effect within 180 days. This exception ends at the completion of the reduction in force.

(4) The change of an employee from regular to substitute in the same pay level in the U.S. Postal Service field service.

(5) The release from a competitive level of a National Guard technician under section 709 of title 32, United States Code.

(6) Placement of an employee serving on an intermittent, part-time, on-call, or seasonal basis in a nonpay and nonduty status in accordance with conditions established at time of appointment.

§ 351.203 Definitions.

In this part:

"Annual Performance Rating of Record" means an official performance rating under a performance appraisal system approved by OPM in accordance with 5 U.S.C., chapter 43; or for an agency not subject to chapter 43, an official performance rating as provided for in the agency's appraisal system.

"Competing employee" means an employee in tenure group I, II, or III.

"Days" means calendar days.

"Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

"Local commuting area" means the geographic area that usually constitutes one area for employment pur-

5 CFR Ch. I (1-1-88 Edition)

poses. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

"Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

"Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position. Employees covered by the Performance Management and Recognition System are General Schedule employees for purposes of determining representative rate.

"Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, except when the function involved is virtually identical to functions already being performed in the other competitive area(s) affected; or the movement of the competitive area in which the function is performed to another commuting area.

§ 351.204 Responsibility of agency.

Each agency covered by this part is responsible for following and applying the regulations in this part when the agency determines that a reduction force is necessary.

§ 351.205 Authority of OPM.

The Office of Personnel Management may establish further guidance and instructions for the planning, preparation, conduct, and review of reductions in force through the Federal Personnel Manual system. OPM may examine an agency's preparations for reduction in force at any stage. When OPM finds that an agency's preparations are contrary to the express provisions or to the spirit and intent of these regulations or that they would result in violation of employee rights

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Office of Personnel Management**§ 351.303**

or equities, OPM may require appropriate corrective action.

Subpart C—Transfer of Function

SOURCE: 52 FR 10024, Mar. 30, 1987, unless otherwise noted.

§ 351.301 Applicability.

This subpart is applicable when the work of one or more employees is moved from one competitive area to another as a transfer of function regardless of whether or not the movement is made under authority of a statute, Executive order, reorganization plan, or other authority.

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area, each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

(d) Except as permitted in paragraph (e) of this section, the losing competitive area must use the adverse action procedures found in 5 CFR Part 752 if it chooses to separate an employee who declines to transfer with his or her function.

(e) The losing competitive area may, at its discretion, include employees who decline to transfer with their function as part of a concurrent reduction in force.

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One, a competing employee is identified with a transferring function if—

(1) The employee performs the function during at least half of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her work time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Identification Method Two is applicable to employees who perform the function during less than half of their work time and are not otherwise covered by Identification Method One. Under Identification Method Two, the losing competitive area must identify the number of positions it needed to perform the transferring function. To determine which employees are identified for transfer, the losing competitive area must establish a retention register in accordance with this part that includes the name of each competing employee who performed the function. Competing employees listed on the retention register are identified for transfer in the inverse order of their retention standing. If for any retention register this procedure would result in the separation or demotion by reduction in force at the losing competitive area of any employee with higher retention standing, the losing competitive area must identify competing employees on that register for transfer in the order of their retention standing.

(e)(1) The competitive area losing the function may permit other em-

§ 351.401

employees to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two. However, the competitive area may permit these other employees to volunteer for transfer only if no competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function.

(2) If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area may give preference to the volunteers with the highest retention standing, or make selections based on other appropriate criteria.

Subpart D—Scope of Competition

§ 351.401 Determining retention standing.

Each agency shall determine the retention standing of each competing employee on the basis of the factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) A competitive area may consist of all or part of an agency. The minimum competitive area in the departmental service is a bureau, major command, directorate or other equivalent major subdivision of an agency within the local commuting area. In the field, the minimum competitive area is an activity under separate administration within the local commuting area. A competitive area must be defined solely in terms of an agency's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined.

(c) When a competitive area will be in effect less than 90 days prior to the effective date of a reduction in force, a description of the competitive area shall be submitted to the OPM for approval in advance of the reduction in

5 CFR Ch. I (1-1-88 Edition)

force. Descriptions of all competitive areas must be made readily available for review.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area which are in the same grade (or occupational level) and classification series and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position could successfully perform the critical elements of any other position upon entry into it, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee. Sex may not be the basis for assigning a position to a competitive level, except for a position which OPM has determined certification of eligibles by sex is justified.

(b) Each agency shall establish separate competitive levels according to the following categories:

(1) *By service.* Separate levels shall be established for positions in the competitive service and in the excepted service.

(2) *By appointment authority.* Separate levels shall be established for excepted service positions filled under different appointment authorities.

(3) *By pay schedule.* Separate levels shall be established for positions under different pay schedules.

(4) *By work schedule.* Separate levels shall be established for positions filled on a full-time, part-time, intermittent, seasonal, or on-call basis. No distinction may be made among employees in the competitive level on the basis of the number of hours or weeks scheduled to be worked.

(5) *By supervisory or nonsupervisory status.* Separate levels shall be established for positions filled by a supervisor or management official as defined in 5 U.S.C. 7103(a)(10) and (11), except that a probationary period required by Subpart I of Part 315 of this chapter for initial appointment to a supervisory or managerial position is not a basis for establishing a separate competitive level.

Office of Personnel Management

(6) *By training.* shall be established by an employed trainee (having all the experience required in § 351.403 of this part.

§ 351.404 Retention standing.

(a) When an employee is released under this part, the agency shall establish a retention standing for that employee. The retention standing shall be based on the employee's performance during the period of retention. Except for duty with the agency, the employee shall register, in standing, the employee's performance.

(1) In the

(2) Temp competitive term promotion

(3) Detail level under appropriate authority

(b)(1) The serving unit or project competitive list apart from that of the expiration

(2) The bottom of paragraph name of competitive level under Part remove his acceptable performance.

§ 351.405 Unacceptable performance.

An employee written description of unacceptable performance from the will be or

Office of Personnel Management

§ 351.501

Subpart E—Retention Standing

§ 351.501 Order of retention—competitive service.

(a) Competing employees shall be classified on a retention register on the basis of their tenure of employment, veteran preference, length of service, and performance in descending order as follows:

(1) By tenure group I, group II, group III; and

(2) Within each group by veteran preference subgroup AD, subgroup A, subgroup B; and

(3) Within each subgroup by years of service as augmented by credit for performance under § 351.504, beginning with the earliest service date.

(b) Groups are defined as follows:

(1) Group I includes each career employee who is not serving a probationary period. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this title is in group I if the employee is otherwise eligible to be included in this group.)

(2) Group II includes each career-conditional employee and each employee serving a probationary period under Subpart H of Part 315 of this chapter. (A supervisory or managerial employee serving a probationary period required by Subpart I of Part 315 of this chapter is in group II if that employee has not completed a probationary period under Subpart H of Part 315 of this chapter.)

(3) Group III includes all employees serving under indefinite appointment, temporary appointment pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment.

(c) Subgroups are defined as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not included in subgroup AD.

(3) Subgroup B includes each non-preference eligible employee.

(d) A retired member of a uniformed service is considered a preference eligible under this part only if the member

(6) *By trainee status.* Separate levels shall be established for positions filled by an employee in a formally designated trainee or developmental program having all of the characteristics covered in § 351.702(e)(1) through (e)(4) of this part.

§ 351.404 Retention register.

(a) When a competing employee is to be released from a competitive level under this part, the agency shall establish a separate retention register for that competitive level. The retention register is prepared from the current retention records of employees. Except for an employee on military duty with a restoration right, the agency shall enter on the retention register, in the order of retention standing, the name of each competing employee who is:

(1) In the competitive level;

(2) Temporarily promoted from the competitive level by temporary or term promotion; or

(3) Detailed from the competitive level under 5 U.S.C. 3341 or other appropriate authority.

(b)(1) The name of each employee serving under a time limited appointment or promotion to a position in a competitive level shall be entered on a list apart from the retention register for that competitive level, along with the expiration date of the action.

(2) The agency shall list, at the bottom of the list prepared under paragraph (b)(1) of this section, the name of each employee in the competitive level with a written decision under Part 432 of this chapter to remove him or her because of unacceptable (Level 1) or equivalent performance.

§ 351.405 Employees demoted because of unacceptable performance.

An employee who has received a written decision under Part 432 of this chapter to demote him or her because of unacceptable (Level 1) or equivalent performance competes under this part from the position to which he or she will be or has been demoted.

§ 351.502

meets at least one of the conditions of the following paragraphs (d)(1), (2), or (3) of this section, except as limited by paragraph (d)(4) or (d)(5):

(1) The employee's military retirement is based on disability that either:

(i) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or

(ii) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38, United States Code.

(2) The employee's retired pay from a uniformed service is not based upon 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training.

(3) The employee has been continuously employed in a position covered by this part since November 30, 1964, without a break in service of more than 30 days.

(4) An employee retired at the rank of major or above (or equivalent) is considered a preference eligible under this part if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code, and meets one of the conditions covered in paragraph (d)(1), (2), or (3) of this section.

(5) An employee who is eligible for retired pay under chapter 67 of title 10, United States Code, and who retired at the rank of major or above (or equivalent) is considered a preference eligible under this part at age 60, only if such employee is a disabled veteran as defined in section 2108(2) of title 5, United States Code.

§ 351.502 Order of retention—excepted service.

Competing employees in the excepted service shall be classified on retention registers in a way that corresponds to that under § 351.501 for employees in the competitive service having similar tenure of employment, veteran preference and performance ratings except that an employee who completes 1 year of current continuous excepted service under a temporary appointment is in tenure group III.

5 CFR Ch. I (1-1-88 Edition)**§ 351.503 Length of service.**

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects the employee's creditable service:

(1) The date the employee entered on duty, when he or she has no previous creditable service;

(2) The date obtained by subtracting the employee's total creditable previous service from the date he or she last entered on duty; or

(3) The date obtained by subtracting from the date in paragraph (b)(1) or (b)(2) of this section, the service equivalent allowed for performance ratings under § 351.504.

(c) An employee who is a retired member of a uniformed service is entitled to credit under this part for:

(1) The length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) The total length of time in active service in the armed forces if the employee is considered a preference eligible under § 351.501(d) of this part.

(d) Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Credit for performance.

(a) Annual performance ratings of record of outstanding (Level 5), exceeds fully successful (Level 4), fully successful (Level 3), minimally successful (Level 2), and unacceptable (Level 1), or equivalent, are those ratings established under Part 430 of this chapter.

(b) An employee's entitlement to additional service credit for performance under this subpart shall be based on the employee's last three annual performance ratings of record received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

(c) Service credit for employees who do not have three actual annual performance ratings of record during the 3-year period prior to the date of issuance of specific reduction-in-force notices shall be based on the employee's last three annual performance ratings of record received during the 3-year period prior to the date of issuance of specific reduction-in-force notices.

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Office of Personnel Management**§ 351.506**

ance of specific reduction-in-force notices shall be determined as follows:

(1) An employee who has not received an annual performance rating of record shall receive credit for performance on the basis of three assumed ratings of fully successful (Level 3) or equivalent.

(2) An employee who has received at least one but fewer than three previous annual performance ratings of record shall receive credit for performance on the basis of the actual rating(s) received and of one, or two, assumed rating(s) of fully successful (Level 3) or equivalent, whichever is needed to credit the employee with three ratings.

(d) The additional service credit an employee for performance under this subpart shall be expressed in additional years of service and shall consist of the mathematical average (rounded in the case of a fraction to the next higher whole number) of the employee's last three (actual and/or assumed) annual performance ratings of record computed on the following basis:

(1) Twenty additional years of service for each performance rating of outstanding (Level 5) or equivalent;

(2) Sixteen additional years of service for each performance rating of exceeds fully successful (Level 4) or equivalent; or

(3) Twelve additional years of service for each performance rating of fully successful (Level 3) or equivalent.

(e) The current annual performance rating of record shall be the last annual rating except that:

(1) An employee who has received an improved rating following an opportunity to demonstrate acceptable performance as provided in Part 432 of this chapter shall have the improved rating considered as the current annual performance rating of record; and

(2) An employee's current annual performance rating of record shall be presumed to be fully successful when the employee had been demoted or reassigned under Part 432 of this chapter because of unacceptable performance and as of the date of issuance of specific reduction-in-force notices has not received a rating for performance

in the position to which demoted or reassigned.

§ 351.505 Records.

Each agency shall maintain the current correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

(a) A representative of OPM; and

(b) An employee of the agency to the extent that the registers and records have a bearing on a specific action taken, or to be taken, against the employee.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for applying the performance factor as provided in § 351.504:

(a) The retention standing of each employee released from a competitive level in the order prescribed in § 351.601 is determined as of the date the employee is so released.

(b) The retention standing of each employee temporarily retained in a competitive level under § 351.608 is determined as of the date the employee would have been released from the competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in the temporary retention.

(c) When an agency discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action to accord with the employee's proper retention standing as of the effective date established by this section.

§ 351.601**Subpart F—Release From Competitive Level****§ 351.601 Order of release from competitive level.**

(a) Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. An agency may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing except:

(1) As required under § 351.606 when an employee is retained under a mandatory exception or under § 351.806 when an employee is entitled to a new written notice of reduction in force; or

(2) As permitted under § 351.607 when an employee is retained under a permissive continuing exception or under § 351.608 when an employee is retained under a permissive temporary exception.

(b) When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.602 Prohibitions.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with:

(a) A specifically limited temporary appointment;

(b) A specifically limited temporary or term promotion;

(c) A written decision under Part 432 of this chapter of removal or demotion from the competitive level because of unacceptable performance.

§ 351.603 Actions subsequent to release from competitive level.

An employee reached for release from a competitive level shall be offered assignment to another position in accordance with Subpart G of this part. If the employee accepts, the employee shall be assigned to the position offered. If the employee has no assignment right or does not accept an offer under Subpart G, the employee shall be furloughed or separated.

5 CFR Ch. I (1-1-88 Edition)**§ 351.604 Use of furlough.**

(a) An agency may furlough a competing employee only when it intends within 1 year to recall the employee to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with highest standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months, it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply § 351.607 and § 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.601 or § 351.605, it shall give retention priorities over other employees in the same subgroup to each group I or II employee entitled under 38 U.S.C. 2021 or 2024, to retention, for 6 months or 1 year after restoration.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the order of release required by § 351.601 or § 351.605.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue

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Office of Personnel Management

§ 351.701

interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

(a) An agency may make exception for not more than 90 days to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release of a higher-standing employee from the same competitive level:

- (1) To continue an activity without undue interruption; or
- (2) To satisfy a Government obligation to the retained employee; or

(3) When the temporary retention of the lower-standing employee does not adversely affect the right of any higher-standing employee who is released ahead of the lower-standing employee. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date the employee's sick leave is exhausted.

(b) When the agency retains an employee for more than 30 days after the effective date of release of a higher-standing employee from the same competitive level, it shall notify in writing each higher-standing employee reached for release of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee, it shall list opposite the employee's name on the retention register the reasons for the exception and the date this employee's retention will end.

Subpart G—Assignment Rights (Bump and Retreat)

§ 351.701 Assignment involving displacement.

(a) *General.* When a group I or II competitive service employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent, or higher, is released from a competitive level, an agency

shall offer assignment, rather than furlough or separate, in accordance with paragraph (b), (c), and (d) of this section to another competitive service position which requires no reduction or the least possible reduction in representative rate. The employee must be qualified for the offered position which shall be in the same competitive area and last at least three months.

(b) *Lower subgroup—bumping.* A released employee shall be assigned in accordance with paragraph (a) of this section and bump to a position that:

(1) Is held by another employee in a lower tenure group or in a lower subgroup within the same tenure group; and

(2) Is no more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released.

(c) *Same subgroup—retreating.* A released employee shall be assigned in accordance with paragraphs (a) and (d) of this section and retreat to a position that:

(1) Is held by another employee with lower retention standing in the same tenure group and subgroup;

(2) Is not more than three grades (or appropriate grade intervals or equivalent) below the position from which the employee was released, except that for a preference eligible employee with a compensable service-connected disability of 30 percent or more the limit is five grades (or appropriate grade intervals or equivalent); and

(3) Is the same position, or an essentially identical one, previously held by the released employee in a Federal agency.

(d) *Limitation.* An employee with a current annual performance rating of record of minimally successful (Level 2) or equivalent may be assigned under paragraph (c) of this section only to a position held by another employee with a current annual performance rating of record no higher than minimally successful (Level 2) or equivalent.

(e) *Pay rates.* (1) The determination of equivalent grade intervals shall be based on a comparison of representative rates.

(2) Each employee's assignment rights shall be determined on the basis

§ 351.702

5 CFR Ch. I (1-1-88 Edition)

of the pay rates in effect on the date of issuance of specific reduction-in-force notices, except that when it is officially known on the date of issuance of notices that new pay rates have been approved and will become effective by the effective date of the reduction in force, assignment rights shall be determined on the basis of the new pay rates.

§ 351.702 Qualifications for assignment.

(a) Except as provided in § 351.703, an employee is qualified for assignment under § 351.701 if the employee:

(1) Meets the OPM standards and requirements for the position, including any minimum educational requirement, and any selective placement factors established by the agency;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the duties of the position;

(3) Meets any special qualifying condition which the OPM has approved for the position; and

(4) Clearly demonstrates on the basis of overall background, including recency of experience, a positive ability to successfully perform all critical elements of the specific position upon entry into it, without undue interruption to that activity and without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

(b) The sex of an employee may not be considered in determining whether an employee is qualified for a position, except for positions which OPM has determined certification of eligibles by sex is justified.

(c) An employee who is released from a competitive level during a leave of absence because of a compensable injury may not be denied an assignment right solely because the employee is not physically qualified for the duties of the position if the physical disqualification resulted from the compensable injury. Such an employee must be afforded appropriate assignment rights subject to recovery as provided by 5 U.S.C. 8151 and Part 353 of this chapter.

(d) If an agency determines, on the basis of evidence before it, that a preference eligible employee who has a

compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of a position to which the employee would otherwise have been assigned under this part, the agency must notify the OPM of this determination. At the same time, the agency must notify the employee of the reasons for the determination and of the right to respond, within 15 days of the notification, to the OPM which will require the agency to demonstrate that the notification was timely sent to the employee's last known address. The OPM shall make a final determination concerning the physical ability of the employee to perform the duties of the position. This determination must be made before the agency may select any other person for the position. When the OPM has completed its review of the proposed disqualification on the basis of physical disability, it must send its finding to both the agency and the employee. The agency must comply with the findings of the OPM. The functions of the OPM under this paragraph may not be delegated to an agency.

(e) An agency may formally designate as a trainee or developmental position a position in a program with all of the following characteristics:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures. To be considered qualified for assignment under § 351.701 to a formally designated trainee or developmental position in a program having all of the characteristics covered in paragraphs (e)(1), (2), (3), and (4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

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§ 351.703

An agency under § 351.703 may regard the requirements for assignment as follows:

(a) The minimum education required for the position;

(b) The employee's ability, and the agency's responsibility, to perform the duties of the position.

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Office of Personnel Management**§ 351.801****§ 351.703 Exception to qualifications.**

An agency may assign an employee under § 351.201(b) § 351.701 without regard to OPM's standards and requirements for the position if:

(a) The employee meets any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment under § 351.201(b) or § 351.705 to a position having a representative rate equal to that to which he or she would be entitled under § 351.701.

(2) An agency may, at its discretion, choose to offer a vacant other-than-full-time position to a full-time employee or to offer a vacant full-time position to an other-than-full-time employee in lieu of separation by reduction in force.

(b) § 351.701 does not:

(1) Authorize or permit an agency to assign an employee to a position having a higher representative rate;

(2) Authorize or permit an agency to displace a full-time employee by an other-than-full-time employee, or to satisfy an other-than-full-time employee's right to assignment by assigning the employee to a vacant full-time position.

(3) Authorize or permit an agency to displace an other-than-full-time employee by a full-time employee, or to satisfy a full-time employee's right to assignment by assigning the employee to a vacant other-than-full-time position.

§ 351.705 Administrative assignment.

(a) An agency may, at its discretion, adopt provisions which:

(1) Permit a competing employee to displace an employee with lower retention standing in the same subgroup consistent with § 351.701 when the agency cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(2) Permit an employee in subgroup III-AD to displace an employee in subgroup III-A or III-B, or permit an employee in subgroup III-A to displace an employee in subgroup III-B consistent with § 351.701; or

(3) Provide competing employees in the excepted service with assignment rights similar to those in § 351.701 and in paragraphs (a)(1) and (2) of this section.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of an other-than-full-time employee to a full-time position;

(4) May not provide for the assignment of a full-time employee to an other-than-full-time position;

(5) May not provide for the assignment of an employee in a competitive service position to a position in the excepted service; and

(6) May not provide for the assignment of an employee in an excepted position to a position in the competitive service.

Subpart H—Notice to Employee**§ 351.801 Notice period.**

(a) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release. When a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(b) The notice shall not be issued more than 90 days before release except with the prior approval of OPM.

(c) The notice period begins the day after the employee receives the notice.

(d) When an agency retains an employee under § 351.606 or § 351.608, the notice to the employee shall cite the date on which the retention period ends as the effective date of the em-

§ 351.802

ployee's release from the competitive level.

§ 351.802 General and specific notices.

When an agency cannot specifically determine all individual actions at the start of the notice period, it may issue general notices which shall later be supplemented by specific notices. The combined general and specific notice periods shall meet the requirements in § 351.801, and the combined contents of the general and specific notices shall meet the requirements in § 351.803.

§ 351.803 Content of notice.

(a) The notice shall state specifically the action to be taken and its effective date except as provided in paragraph (b) of this section; the employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last three years; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower-standing employee in the same competitive level under § 351.607 or § 351.608; the information on reemployment rights except as permitted by § 351.804; and the employee's right, as applicable, to grieve under a negotiated grievance procedure or to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency shall comply with the provisions of § 1201.21 of this title.

(b) A general notice shall inform the employee that action under this part may be necessary but a specific action has not yet been determined. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall contain an expiration date. A general notice may also include other information specified in paragraph (a) of this section.

§ 351.804 Notice concerning consideration for reemployment.

An employee who receives a specific notice of separation under this part must also be given information con-

5 CFR Ch. I (1-1-88 Edition)

cerning the right to reemployment consideration under the provisions of Subparts B and C of Part 330 of this chapter. This information should be included in or with the specific reduction-in-force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

§ 351.805 Expiration of notice.

(a) An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice.

(b) A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment made to the notice before the agency takes the action. An agency may not take action before the effective date in the specific notice. An action taken after the specified date in the specific notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee on annual leave with or without his or her consent, on leave without pay with his or her consent, or in a nonpay status without his or her consent.

Office of Personnel Management**§ 351.1004****Subpart I—Appeals and Corrective Action****§ 351.901 Appeals.**

An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board.

[52 FR 46051, Dec. 4, 1987]

§ 351.902 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to the former grade or rate of pay held or to an intermediate grade or rate of pay, it shall make the restoration retroactively effective to the date of the improper action.

Subpart J—Reemployment Priority List

SOURCE: 46 FR 3805, Jan. 16, 1981, unless otherwise noted.

§ 351.1001 Establishment and maintenance of the reemployment priority list.

Each agency shall establish and maintain a reemployment priority list for each commuting area in which it separates group I or group II employees from competitive positions under this part.

§ 351.1002 Persons covered.

(a) The name of each group I or group II employee who receives a specific notice of separation from a competitive position (as distinguished from an excepted position) under this part is entered on the reemployment priority list.

(b) This priority extends to all competitive positions in the commuting area for which the employee is qualified and available, except as provided in § 351.1005.

(c) Subpart B of Part 330 of this title covers appointment from the reemployment priority list.

§ 351.1003 Employee eligibility.

(a) A full-time group I or group II employee is entered on the reemployment priority list unless he or she has

declined assignment under Subpart G of this part to a position that:

- (1) Is full-time;
- (2) Is competitive;
- (3) Is nontemporary; and
- (4) Has a representative rate no lower than that of the position from which the employee was separated.

(b) An other-than-full-time group I or group II employee is entered on the reemployment priority list unless he or she has declined assignment under Subpart G of this part to an other-than-full-time position that:

- (1) Is of the same type work schedule (i.e., part-time, intermittent, or seasonal) as the position from which the employee was separated;
- (2) Is competitive;
- (3) Is nontemporary;
- (4) Has a representative rate no lower than that of the position from which the employee was separated; and

(5) Has a regularly scheduled administrative workweek no lower than that or the position from which the employee was separated.

§ 351.1004 Duration of eligibility.

(a) The name of a group I employee remains on the reemployment priority list for 2 years, and a group II employee's name for 1 year, from the date he or she was separated.

(b) An employee's name is deleted from the reemployment priority list when the employee submits a written request to the agency asking that his or her name be deleted.

(c) A full-time employee's name is also deleted from the reemployment priority list when the employee:

- (1) Accepts a non-temporary, full-time, competitive position; or
- (2) Declines under this subpart a full-time, nontemporary, competitive position with a representative rate the same as, or higher than, that of the position from which he or she was separated under this part.

(d) An other-than-full-time employee's name is also deleted from the reemployment priority list when the employee:

- (1) Accepts a nontemporary competitive position; or

§ 351.1005

(2) Declines under this subpart a nontemporary, competitive position with a representative rate, and regularly scheduled administrative work-week, the same as or higher than that of the position from which the employee was separated under this part.

§ 351.1005 Operation of the list in Alaska and overseas.

(a) The name of each group I or group II employee who receives a notice of separation under this part from a competitive position in Alaska or overseas is entered on the reemployment priority list for the area in which the position from which separated is located, except when:

(1) The employee leaves that area; or

(2) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas services or residence, combined with prospective overseas service under available appointments, exceeds the maximum duration of an overseas duty tour in the agency's rotation program.

(b) Upon his or her written request, the name of an employee who leaves the area is entered on the agency's reemployment priority list for:

(1) The commuting area from which he or she was employed for Alaskan or overseas service; or

(2) Another area, except in Alaska or overseas, that is mutually acceptable to the employee and the agency.

(c) In addition to any of the reasons, as appropriate, in § 351.1004 (b), (c), or (d), for deleting an employee's name from the reemployment priority list, the name of an employee is deleted from an Alaskan or overseas reemployment priority list when the employee:

(1) Leaves the area covered by that list; or

(2) Becomes disqualified for overseas appointment because of his or her previous service or residence.

5 CFR Ch. I (1-1-88 Edition)

PART 352—REEMPLOYMENT RIGHTS

Subpart A—[Reserved]

Subpart B—Reemployment Rights Based on Movement Between Executive Agencies During Emergencies

Sec.

- 352.201 Letter of Authority.
- 352.202 Request for Letter of Authority.
- 352.203 Standards for issuing Letters of Authority.
- 352.204 Basic eligibility for reemployment rights.
- 352.205 Appeal of losing agency.
- 352.205a Authority to return employee to his or her former or successor agency.
- 352.205b Authority to return an SES employee to his or her former or successor agency.
- 352.206 Expiration of reemployment rights.
- 352.207 Exercise or termination of reemployment rights.
- 352.208 Agency's obligation to reemploy.
- 352.209 Employee appeals to the Merit Systems Protection Board.

Subpart C—Detail and Transfer of Federal Employees to International Organizations

- 352.301 Purpose.
- 352.302 Definitions.
- 352.303 Effective date of equalization allowance.
- 352.304 International organizations covered.
- 352.305 Eligibility for detail.
- 352.306 Length of details.
- 352.307 Eligibility for transfer.
- 352.308 Effecting employment by transfer.
- 352.309 Retirement, health benefits, and group life insurance.
- 352.310 Equalization allowance.
- 352.311 Reemployment.
- 352.312 When to apply.
- 352.313 Failure to reemploy and right of appeal.
- 352.314 Consideration for promotion.

Subpart D—Employment of Presidential Appointees and Elected Officers by the International Atomic Energy Agency

- 352.401 Purpose.
- 352.402 Coverage.
- 352.403 Definitions.
- 352.404 Retirement and insurance.
- 352.405 Resumption of Federal service.

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